

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA, ET AL.,

CASE NO. C-1-02-107

Plaintiffs,

and

SIERRA CLUB, ET AL.,

Judge S. Arthur Spiegel

Intervenors,

v.

BOARD OF COUNTY COMMISSIONERS
OF HAMILTON COUNTY, OHIO, ET AL.

Defendants.

**MOTION OF SIERRA CLUB FOR LEAVE TO FILE
SUR-REPLY PURSUANT TO LOCAL RULE 7.2(A)(2)**

Intervenors, Sierra Club and Marilyn Wall, move this Court for leave to file a Sur-Reply to the Reply Brief of the Defendants Board of County Commissioners, Hamilton County, Ohio and the City of Cincinnati to the Intervenor Sierra Club's Memorandum in Opposition to Entry of the Consent Decrees.

In support of this request, Sierra Club and Marilyn Wall state that in their Reply Brief, Defendants submitted a declaration of Jeffrey W. Rexhausen. This declaration is in

the nature of an expert report. Mr. Rexhausen was not identified by the Defendants during the discovery period set by the Court in this case and has not heretofore submitted a report or any expert opinions. Attached to Mr. Rexhausen's Declaration is the declaration of Dr. George Vredevelde, which was previously submitted in this case. Mr. Rexhausen states that he worked with Dr. Vredevelde on his economic analysis, but he is not mentioned in the Vredevelde Declaration as a co-author or otherwise disclosed as a participant.

In order to address the issues raised by this witness, the Intervenors request leave to file the attached Sur-Reply along with the attached 4th Declaration of Dr. Kavanaugh.

Respectfully submitted,

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MEMORANDUM OF LAW

A sur-reply will typically be permitted by a court when a party demonstrates that papers to which it seeks to file a reply raise new issues that are material to the disposition of a question before the court.

The Defendants submitted their Reply to the Sierra Club's Opposition to Entry of the Consent Decrees on May 13, 2004. Defendants Reply Brief contained the Declaration of Mr. Jeffry Rexhausen, who questioned the declarations of Dr. Michael Kavanaugh. The Defendants did not identify Mr. Rexhausen during the discovery period, nor had he previously submitted a declaration or report in this case.

The Intervenor Sierra Club and Marilyn Wall seek leave to file 1) a Sur-Reply to the Reply Brief of the Defendants (attached hereto as Exhibit 1) and 2) the 4th Declaration of Dr. Michael Kavanaugh (attached hereto and incorporated herein as Exhibit 2), which respond specifically to the issues raised by Mr. Rexhausen.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2004, a copy of the forgoing Intervenor Sierra Club's Motion for Leave to File a Sur-Reply and Sierra Club's Sur-Reply Motion and Memorandum was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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